

Serial No.: 10/075,970

REMARKS

The Office Action indicates that the Applicant is required under 35 U.S.C. §121 to choose between the following: Species I: a medical device with biodegradable inner material and biodegradable outer covering material. Species II: a medical device with non-biodegradable inner material and biodegradable outer covering material.

Because the Office Action indicates that a reply must include an identification of the species that is elected, Applicant hereby elects, with traverse, so-termed Species I (claims 1-21 and 45 reading thereon) for initial prosecution on the merits.

This election is made with traverse, because it is not believed that a species election is proper under the present circumstances. In particular, 37 CFR § 1.146, *Election of species*, reads as follows (emphasis added):

In the first action on an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby, the examiner may require the applicant in the reply to that action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable. However, if such application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application.

Thus, it is believed that species elections are applicable where a generic claim to a generic invention is present, and the generic claim embraces several patentably distinct species.¹ The two alleged species in Office Action, on the other hand, each involves its own independent (generic) claim: claim 1 and claim 22.

CONCLUSION

Applicant submits all pending claims are in condition for allowance, early notification of which is earnestly solicited. Should the Examiner be of the view that an interview would expedite consideration of this Amendment or of the application at large, request is made that the

¹ The requirement of a generic claim is also implicit in the Office Action, which states the following (emphasis added): "Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable."

Serial No.: 10/075,970

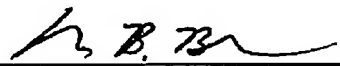
Examiner telephone the Applicant's attorney at (703) 433-0510 in order that any outstanding issues be resolved.

FEES

If there are any fees due and owing in respect to this amendment, the Examiner is authorized to charge such fees to deposit account number 50-1047.

Respectfully submitted,

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Certificate of Facsimile Transmission

I hereby certify that this document and any document referenced herein is being sent to the United States Patent and Trademark office via Facsimile to: 703-872-9306 on

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David B. Bonham
(Printed Name of Person Mailing Correspondence)



(Signature)